

Van Schaik

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-221999

DATE: February 24, 1986

MATTER OF: Cooley Container Corporation

DIGEST:

Protest that agency proposes to reject the protester as nonresponsible because the agency believes that protester lacks business integrity and adequate financial resources is dismissed as premature because the agency has not yet made its final decision on the matter.

Cooley Container Corporation, a small business, protests that the Army Troop Support Command proposes to find Cooley ineligible for award under invitation for bids (IFB) No. DAAK01-85-B-A288 because the Army believes that Cooley lacks "integrity" and "financial resources."

We dismiss the protest.

The documents submitted by the protester show that the Army has questioned Cooley's eligibility for award on grounds of integrity because of statements supposedly made by Cooley in connection with the Army's belief that Cooley may be owned or controlled by a government employee;^{1/} the Army also doubts whether Cooley has adequate financial resources to perform the contract. Here, since it appears that the Army has offered Cooley the opportunity to demonstrate its responsibility and has yet to make a final determination as to Cooley's eligibility for award under this solicitation, the protest is premature. Bobnreen Consultants, Inc., B-218214, Feb. 27, 1985, 85-1 CPD ¶ 251.

^{1/} We recently denied a protest filed by the protester, holding that the Army could properly determine that Cooley was ineligible for award under a prior solicitation because Cooley was owned or controlled by a government employee. Cooley Container Corp., B-220801, Jan. 31, 1986, 86-1 CPD

Moreover, in the event the Army decides to reject Cooley's bid, the Small Business Administration (SBA), not this Office, will ultimately decide Cooley's responsibility, since it is SBA's statutory function to review an agency's finding of nonresponsibility and to determine conclusively a small business concern's responsibility. It does so by either issuing or refusing to issue a certificate of competency in accord with the Small Business Act, 15 U.S.C. § 637(b)(7) (1982). Consequently, if the Army finds Cooley nonresponsible, we would not ordinarily review that determination, since such a review would be tantamount to a substitution of our judgment for that of the SBA. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(3) (1985); Franklin Wire & Cable Co., B-218557, et al., May 7, 1985, 85-1 CPD ¶ 511.

The protest is dismissed.

Ronald Berger

Ronald Berger
Deputy Associate
General Counsel